UNITED STATES PATENT AND TRADEMARK OFFICE

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3   UNITED STATES PATENT AND TRADEMARK OFFICE

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6   BEFORE THE BOARD OF PATENT APPEALS

7   AND INTERFERENCES

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10   Ex parte FABRICE DELLA MEA

11 _____

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13   Appeal 2007-2856

14   Application 09/749,656

15   Technology Center 2600

16 _____

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18   Oral Hearing Held: February 13, 2008

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22 Before JOSEPH F. RUGGIERO, ROBERT E. NAPPI, and KEVIN F.

23 TURNER, Administrative Patent Judges

24

25 ON BEHALF OF THE APPELLANT:

26

27   RUTHLEEN UI, ATTORNEY

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33   The above-entitled matter came on for hearing on Wednesday,

34 February 13, 2008, commencing at 1:00 p.m., at The U.S. Patent and

35 Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Virginia

36 Johnson, Notary Public.

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1   MS. HALL: Good afternoon. This is Calendar Number 14, Appeal

2 Number 2007-2856. Attorney's name is Ruthleen Ui.

3   MS. UI: Good afternoon.

4   JUDGE RUGGIERO: Hello.

5   MS. UI: My name is Ruthleen Ui and I represent the Appellant with

6 respect to Appeal Number 2007-2856.

7   JUDGE RUGGIERO: Could you spell your name for the reporter?

8   MS. UI: Ruthleen Ui, R U T H L E E N. Ui, U I.

9   JUDGE RUGGIERO: Great.

10   MS. UI: Claims 1 through 22 are pending in the present application.

11 Claims 20 and 21 have been allowed. Claims 2 and 8 and 15 and 18 have

12 been objected, but would be allowed if rewritten independent form. I will be

13 specifically discussing the rejection of Independent Claim 1 as discussed in

14 the Appellant's Appeal Brief.

15   Claim 1 was rejected as being unpatentable over Watanabe in view of

16 Oestreich. The Examiner cites Oestreich for teaching selecting a common

17 coding mode for each mobile station and the selection of a common coding

18 mode takes account the traffic load in at least cell. It is the Appellant's

19 position that Oestreich does not teach this aspect of the claim.

20   The Examiner asserts that Oestreich teaches that the traffic load

21 causes transcoding to change, but it is Appellant's position that in Oestreich

22 during a tandem free operation mode, the speech information is transmitted

23 only via broadband transmission. And, Oestreich merely discloses that a

24 control, control means detects interruptions in the transmission and therefore

25 if change-over is necessary, it changes to a narrowband speech coding

26 method.

1   Oestreich discloses that for a given connection to monitor the

2   transmission possibilities and depending on this monitoring to execute, if

3   necessary, a switch-over from broadband to a narrowband speech coding

4   method so that it is switching over from a tandem free operation mode to a

5   non-tandem free operation mode depending on whether it's in the broadband

6   or narrowband transmission.

7   An example of a switch-over from the broadband to narrowband

8   speech coding is when there's a bottleneck in the allocation of resources.

9   JUDGE TURNER: Can I just stop you.

10   MS. UI: Sure.

11   JUDGE TURNER: The transition of that mode -- how does the last

12   part of Claim 1 that we're talking about, how does that last limitation in

13   Claim 1 doesn't read on that?

14   MS. UI: It was just -- that's just a lead into the fact that, you know,

15   to combine these references, that, that secondary -- the Oestreich reference is

16   not directed to tandem free operation. So, the claim as a whole is directed to

17   a tandem free operation between a mobile, between two mobile phones.

18   So, as this secondary, this secondary reference, Oestreich, is not

19   directed to tandem free operation when it decides to switch-over to the

20   narrowband operation, it's not related to the selection of a common coding

21   mode during tandem operation, during tandem free operation.

22   JUDGE TURNER: Right, but it does disclose the, the, the TFO?

23   MS. UI: In the instance of when it's broadband transmission.

24   JUDGE TURNER: I mean in terms of general disclosure.

25   MS. UI: Yes.

26   JUDGE TURNER: I mean, it does, it does disclose a TFO, so we

3

1   have in both references do -- do they not or do they -- the both of them --

2   MS. UI: Yes, they disclosure tandem free operation, but it's not

3   during the selection of a common coding mode. So --

4   JUDGE TURNER: Okay, but in terms of the selection, of selecting a

5   common coding mode, the base reference Watanabe does teach that. Does it

6   not, or it does not?

7   MS. UI: The Watanabe reference?

8   JUDGE TURNER: Yes.

9   MS. UI: The primary reference, Watanabe, was not cited for

10 teaching selection of a common coding mode.

11   JUDGE TURNER: I, I understand that explicitly, but the -- my

12 question is does Watanabe actually teach that aspect? I'm just saying the

13 Examiner says is not relying on the Watanabe for that, but my question to

14 you would be doesn't Watanabe teach selection a common coding mode for

15 each mobile station?

16   MS. UI: How --

17   JUDGE TURNER: Which is sort of the first part of the, of, of the --

18   MS. UI: Yes, however it's clear in Watanabe that that selection of a

19 coding mode is purely based on a priority table that is preset and is not

20 modifiable. It's either A or B, and A being priority over B. And so, it does

21 not take into account any of the other situation other than this preset A or B.

22   JUDGE TURNER: Okay. No, I understand that it's different. I

23 mean, I guess the question is does it teach that aspect of selecting a common

24 mode for each mobile station. I understand that there are other --

25   MS. UI: Sure.

26   JUDGE TURNER: --bases on which it's doing it, but it would seem

1   like it does at least satisfy that part. I understand it doesn't satisfy the rest in

2   your estimation.

3   MS. UI: Yes, it does not satisfy.

4   JUDGE TURNER: Okay.

5   MS. UI: Okay. So continuing back with Oestreich reference --

6   JUDGE TURNER: Okay.

7   MS. UI: -- so, basically it's our position that since -- it's basically

8   just a switching between a broadband to a narrowband transmission and it's

9   not directed to selecting a common coding mode for each mobile station.

10   And, then with respect to the Watanabe reference, the Examiner had

11   referred to the Watanabe reference as the primary reference for teaching.

12   So, it's Applicant's position that Watanabe discloses a selection of a coding

13   mode according to a coding mode which mobile stations have in common,

14   and in particular the goal of Watanabe is to permit a control station to select

15   a speech coding scheme according to an order of priority. So, in

16   determining which coding mode selected preferences given purely based on

17   priority. And, in Watanabe preference is given, is given to coding mode A

18   which has higher priority over coding mode B as I discussed earlier.

19   And, the feature of Watanabe is that the transfer of selection

20   conditions between control stations is not required since priority information

21   regarding the coding schemes are already pre-stored. And, the selection of

22   Watanabe merely selects the highest priority coding mode which can be used

23   by mobile stations, for example, in communication with each other, and is

24   based purely on, on stored table information. So, therefore, it is the

25   Appellant's position that the combination of Watanabe with Oestreich is not

26   obvious because Watanabe clearly states a table structure with this limited

1   information within the table. So, it is Appellant's position that is contrary to

2   the principal of operation of Watanabe which clearly has the stable structure

3   to take into account any other factors in the determination of an allegedly

4   optimum transmission load -- I mean coding mode.

5   So, basically it's Appellant's position that a selection of a coding

6   mode in Watanabe is based solely on the coding mode that the mobile

7   stations have in this table, and there's no teaching or suggestion that the

8   selection of the coding mode takes into account traffic load of a sub. And,

9   there was no teaching or suggestion that it should be modified otherwise as it

10   clearly indicates it's a table.

11   So, therefore these reasons it's the Appellant's position that Claim 1's

12   independent claims should be deemed allowable. And, Claim 22 recites

13   elements similar to Claim 21 and so -- to 1, so it should be deemed

14   allowable for similar reasons. Thank you.

15   JUDGE TURNER: But, but just one last quick question.

16   MS. UI: Sure.

17   JUDGE TURNER: You, you had indicated that, that you -- that the

18   references were not combinable in your view and Appellant's view because

19   there were inner operable with --

20   MS. UI: No, not because they were inner operable, but because the

21   primary reference clearly indicates a way of obtaining an allegedly optimum

22   signal and it does that purely by this table structure. So -- and it, and it does

23   not take into account any other factors, and it appears as if it suffers from the

24   same deficiencies of the prior art discussed in the background of the

25   applicants invention in which selecting a common coding mode it merely

26   selects the, the, the optimized priority mode and that's all it does. And so, it

1 seems to suffer from the same deficiencies in the prior art is that it never

2 takes into account other factors that can slow down the transmission of

3 signal information. So, that is why it's not Appellant's position that it's not

4 obvious because, you know, in, in the prior art it never took that into

5 account.

6   JUDGE TURNER: It seems a little bit like you're sort of suggesting

7 teaching away, but you're not saying it. And, I, I would just want to be

8 clear.

9   MS. UI: I don't believe the reference teaches away from obtaining an

10 optimum signal, but, I mean, I believe that it does not teach taking into

11 account any other information other than a priority table.

12   JUDGE TURNER: Okay, any questions? Okay.

13   MS. UI: Thank you.

14   JUDGE TURNER: Thank you.

15   (Whereupon, the proceedings concluded.)